

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.Present : **Tmt.N.Renuga**, B.A., B.L.,

District Munsif, Sulur

Saturday the 2nd day of March 2024**I.A.No.6/2023****in****O.S.No.1003/2017**

A.Krishnasamy

...Petitioner/ Plaintiff

/ Vs /

1. P.Palanisamy

2. P.Eswaran

3. P.Manisankar

4. Ponnarasi

...Respondents/ Defendants

This petition is coming on 27.11.2023 for final hearing before me in the presence of Thiru.V.Raveendran, Advocate for the Petitioner and Thiru.K.Shanmuganathan, Advocate for the Respondents and upon hearing of both parties and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Petition filed by the petitioner under Order 26 rule 9 and section 151 of CPC to appoint the same Advocate Commissioner to revisit the suit property and note down the physical features and to measure the suit properties along with assistance of Taluk Surveyor.

1. The brief averments of the affidavit filed by the Petitioner as follows:-

1.1. The petitioners/plaintiffs have filed the main suit for permanent injunction against the respondents/defendants. The learned Commissioner visited the suit properties and measure the same with the Assistance of Taluk Surveyor in IA.No.858/2017 filed by the 1st and 2nd defendants. In the above said record is neither correct nor complete and it is vague and not sufficient to find out real litigation between the parties. The learned surveyor also failed to note there is a rain water course (Nilaveyal Odai) is situated in S.F.No.89/1. Further the surveyor has not measured the property properly and measuring the same without fixing the

boundary line of S.F.No.89, 88/1 and 88. The learned commissioner is also omitted to state the entire physical features of the suit properties.

1.2. There is a rain water course is situated immediately on the North of the existing cart track and which is 2 feet lower than the surface level of the existing cart track. Further there is a row of coconut trees height about 30 feet is situated. On the Southern side of the existing cart track there is a bund height about 2 feet. Further the petitioner/plaintiff residential house and compound wall is old house constructed about more than 20 years back. The above physical features and measurement are vital and essential to find out the real litigation between the parties and to end the litigation.

1.3. The petitioner have filed the detailed objection for the above commissioner's report. The commissioner will clarify the objections in the court. But, the learned commissioner has not filed any clarification so far. Hence, it is just and necessary to revisit the suit property and to measure the same along with assistance of Taluk Surveyor by the commissioner and to file the detailed report in respect of the suit properties, in the interest of justice.

1.4. Hence, to appoint the same Advocate Commissioner to revisit the suit property and note down the physical features and to measure the suit properties along with assistance of Taluk surveyor and to file his detailed report. Hence, this petition.

2. The brief averments of Counter statement filed by the 1st respondent and adopted by the 2nd to 4th respondents as follows:

2.1. The application is false, frivolous, vexatious and unsustainable, both in law and on facts of the case. In order to prevent from the proper and clear report submitted by the Advocate Commissioner in IA.no.858/2017. The petitioner came forward with this baseless application by stating the commissioner failed to note the physical features correctly and incompletely. To prove the existence of the rain

water course i.e., Nilaviyal Odai, the petitioner not produced any documents to substantiate the same.

2.2. After filing the objection for the report filed by the Advocate Commissioner, the petitioner came forward with this application to appoint the same Advocate Commissioner to revisit the suit property. But the petitioner failed to do the same from the date of the objection filed by him respondents and now the petitioner came forward with this application by stating false and frivolous and suppressing the facts.

2.3. The petition filed by the petitioner is nothing but only to drag the proceedings of the case as because the petitioner had no evidentiary proof to substantiate his case. The reason mentioned by the petitioner in the application are not sufficient and it is an imaginary through of the petitioner. The petitioner did not produce a single piece of document before this Hon'ble court, which shows that the petition filed by the petitioner is false and frivolous in nature. This application lacks bonafide and liable to be dismissed.

3. Point for Consideration:-

Whether the petition under Order 26 rule 9 and section 151 of CPC is to be allowed?

4. Points:-

4.1. Heard both side, records perused. The main suit is filed for permanent injunction to restrained the defendants from encroaching the irrigation chanal which is running east west in S.F.No.89/1 to an extent of 5.8 meter x 107.4 meter. In this case the Advocate Commissioner along with Surveyor has taken in IA.No.858/2017 to visit the property and the Advocate Commissioner along with Surveyor has inspected the suit property and measured the same. The Advocate Commissioner filed his report on 10.07.2018 along with Surveyor report.

4.2. Further, after filing of Commissioner's report, this case sent for mediation and the matter has not been settled and pending in the stage of trial till 30.09.2022. The plaintiff filed a petition to implead third party 3rd and 4th defendants and plaint

got amended and again this case posted in trial in list on 11.07.2023. On the same date the plaintiff filed petition for reply statement and the same also allowed. Subsequent on 18.08.2023 this case posted in trial in list on 19.09.2023, the plaintiff filed this petition to re-issue Advocate commission warrant to the same commissioner by stating reasons the Advocate Commissioner has failed to measure the property in S.F.No.89, 88/1, 88 and failed to note down the irrigation chanal (Nilaveyal Odai) in S.F.No.89/1 and further the petitioner contents the irrigation chanal immediately situated on North of cart track, which is lower then 2 feet from surface level and failed to note down the coconut trees.

4.3. But on perusal of records, there is no memo of instructions given by the petitioner/plaintiff before the inspection of Advocate Commissioner in earlier visit. Further this is the burden to prove the existence of Nilaviyal Odai in S.F.No.89/1 by the plaintiff through the substantial piece of documentary evidence. On perusal of records filed by the respondents in Ex.R.2 the 'A Register' for Kaduvettipalayam village for the S.F.No.89/1 is denotes கூட்டுத் திட்டம். The document filed by the petitioner in Ex.P.1 the existence of Nilaveyal Odai is stated as east west Nilaveyal Odai running until S.F.No.89/1 through S.F.No.88/A. Further the S.F.No.91/3 is detailed as Nilaveyal Odai and runs till S.F.No.89/1.

4.4. Further the perusal of FMB, for S.F.No.89/1 on the north of S.F.No.89/1 the Nilaveyal Odai enters towards south from S.F.No.88/A and turns East and runs East West manner in S.F.No.89/1. These are all the facts to be proved through substantial oral and documentary evidences. The main suit filed for bare injunction, the plaintiff relief in the Commission application is beyond scope of main relief which is to measure the property in S.F.No.89, 88/1 and 88 and to fix boundary line. Further the Advocate Commission report has been filed in the year of 2018 after laps of 5 years the petitioner filed this petition to revisit the property which having in ordinant delay.

4.5. On perusal of Advocate Commissioner report, the surveyor also filed his report by measuring the S.F.No.89/1 and noted its measurement and noted the

encroachments of plaintiff, 1st and 2nd defendants. Hence, this being so, it is not necessary to order of reissue of Advocate Commissioner warrant in a bare injunction suit.

In the result, this petition is dismissed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, and corrected and pronounced by me in open court this the 2nd day of March 2024.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses on Petitioner side:-

Nil

List of documents on Petitioner side:-

Ex.P.1	13.04.2022	Proceedings of Deputy Tahsildar	True copy
--------	------------	---------------------------------	-----------

List of witnesses on Respondents side:-

Nil

List of documents on Respondents side:-

Ex.R.1	18.06.1979	Partition deed	Xerox copy
Ex.R.2	05.01.2023	Adangal for S.F.No.89/1 Kaduvettipalayam village	Xerox copy

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.6/2023 in
O.S.No.1003/2017
Dated : 02.03.2024
DMC, Sulur.